

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

MANUEL LUQUE-VILLALOBOS, AS PARENT
AND NATURAL GUARDIAN OF E.L.R., AN
INFANT,

Plaintiffs,

COMPLAINT

vs.

PENFIELD CENTRAL SCHOOL DISTRICT,

Defendant.

The Plaintiffs, by their attorneys, Fitzsimmons, Nunn & Plukas, LLP, hereby complain of the Defendant as follows:

1. At all times hereinafter mentioned, the Plaintiffs, Manuel Luque-Villalobos and E.L.R., were and are residents of the County of Monroe, State of New York.

2. Manuel Luque-Villalobos is Parent and Natural Guardian of minor, E.L.R.

3. At all times hereinafter mentioned, the Defendant, Penfield Central School District, was, and remains, a school district duly organized and operating under the provisions of the State of New York Education Law and authorized by the Commissioner of Education and the New York State Education Department.

4. Prior to the commencement of this action, on August 2, 2018, Plaintiffs delivered to the Penfield Central School District a written, verified Notice of Claim, setting forth the time when and the place where the incident occurred, which is the subject of this lawsuit, the nature and extent of the injuries, and damages sustained.

5. On September 21, 2018, the Plaintiff, E.L.R., testified at a Section 50-h hearing, pursuant to the General Municipal Law, at the request of the Defendant Penfield Central School District.

6. More than thirty (30) days have elapsed since the Notice of Claim was delivered to the Penfield Central School District and the Defendant Penfield Central School District has not adjusted same and has failed and neglected to make any payment of such claim.

7. On June 14, 2018 at approximately 3:15 p.m. minor Plaintiff, E.L.R., was a student lawfully present at the premises known as the Scribner Elementary School, 1750 Scribner Road, Penfield, New York 14526.

8. While present at the above location, while a student, E.L.R. was standing in his first grade classroom, the room assigned to Mr. Oetinger.

9. At the above-referenced date, time and location, E.L.R. was injured when the substitute teacher, an employee of the Penfield Central School District, closed the door on Plaintiff's finger causing an amputation of E.L.R.'s finger.

10. Upon information and belief, at the time of said incident, the Plaintiff, E.L.R., was under the direct supervision of the substitute teacher employed by the Defendant, Penfield Central School District.

11. Plaintiff, E.L.R., has sustained serious personal injuries consisting of a finger laceration, avulsion and amputation of a finger and permanent injury, and has sustained pain and suffering.

12. Upon information and belief, at all times hereinafter mentioned, the

negligence of the Defendant, Penfield Central School District, included, but was not limited to the negligent hiring, training and employing of incompetent and untrained personnel to act as a substitute teacher for the Defendant, Penfield Central School District.

13. The injuries complained of were sustained wholly and solely as a result of the negligence of the Penfield Central School District, its agents, servants and/or employees, with no comparative fault on the part of the Plaintiff, E.L.R.

14. The above injuries were proximately caused by the actions, inactions, omissions and neglect of the Penfield Central School District.

15. As a result, the Plaintiffs have been damaged in a sum that exceeds the jurisdictional limit of all lower Courts that might otherwise have jurisdiction over this matter.

WHEREFORE, the Plaintiff, Manuel Luque-Villalobos, as Parent and Natural Guardian of the Plaintiff, E.L.R., demands judgment against the Defendant, Penfield Central School District, in an amount greater than the jurisdictional limit of all lower Courts, together with interest and costs.

Dated: January 15, 2019

Yours, etc.



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